



California Fair Political Practices Commission

June 22, 1988

Stephanie A. Atigh
Office of the City Attorney
200 Lincoln Avenue
Salinas, CA 93901

Re: Your Request for Advice
Our File No. I-88-140

Dear Ms. Atigh:

You have requested advice on behalf of members of the planning commission and city council of the City of Salinas about application of the conflict-of-interest provisions of the Political Reform Act (the "Act")^{1/} to their duties on those agencies.

We are treating your request as one for informal assistance pursuant to Regulation 18329(c)(4)(F) (copy enclosed) because we do not have enough facts to provide specific advice for each agency member.^{2/} If you wish to obtain formal advice, you may submit additional factual material and we will provide additional advice.

^{1/} Government Code Sections 81000-91015. All statutory references are to the Government Code unless otherwise indicated. Commission regulations appear at 2 California Code of Regulations Section 18000, et seq. All references to regulations are to Title 2, Division 6 of the California Code of Regulations.

^{2/} Informal assistance does not provide the requestor with the immunity provided by an opinion or formal written advice. (Government Code Section 83114; 2 Cal. Code of Regs. Section 18329(c)(3).)

QUESTION

Are members of the planning commission and city council disqualified from participating in agency decisions about amending land use designations in the general plan because they have interests in real property, investment interests, or clients who own real property?

CONCLUSION

In general, a public official is disqualified from participating in a decision if it is foreseeable that the decision will materially affect the official's real property interest worth \$1,000 or more, if the effect of the decision will be different from the effect on the general public. A public official also is disqualified from participating if it is foreseeable that a decision will materially affect 1) a source of income of \$250 or more promised to or received by the official within 12 months before a decision, or 2) a business entity in which the official has an investment interest with a fair market value of \$1,000 or more, if the effect is different from the effect on the general public. Questions about specific members are answered separately in the Analysis section of this letter.

FACTS

Salinas is a charter city with a population of less than 100,000. The planning commission will be considering amending general plan land use designations, which the planning commission later will present to the city council for final approval. Salinas has no ordinance or charter provision pursuant to Government Code Section 65803, requiring zoning to be consistent with land use designations. Furthermore, subsection (d) of Government Code Section 65860, which requires zoning to be consistent with land use designations for certain charter cities with more than 2,000,000 population, does not apply to Salinas. Therefore, the Salinas zoning ordinance does not have to be consistent with general plan land use designations.

In your opinion, zoning alone establishes permitted or conditional uses of property in Salinas. Even though land use designations show present and future property owners how the character of a neighborhood may change in 20 years, land use designations do not determine future zoning decisions. Therefore, zoning alone affects property values. Consequently, you believe decisions about land use designations will not affect property values in Salinas.

The planning commission has seven members. Most planning commissioners own real estate in Salinas. Four of seven planning commissioners are attorneys. The following is a list of their financial interests:

1. Anna Caballero owns at least a 10-percent share worth more than \$10,000 in her law firm.
2. Frank Noll owns at least a 10-percent interest worth more than \$10,000 in his law firm. Mr. Noll also owns at least a 10-percent interest worth more than \$10,000 in a property management company.
3. Robert Taylor is an attorney and sole practitioner. Mr. Taylor's client, Mr. Higashi, has paid Mr. Taylor more than \$250 within the past 12 months for a legal matter. Mr. Higashi plans to appear before the planning commission to oppose changing the designation of his property from agricultural to park use.
4. T. Bob Uemura owns at least a 10-percent share worth more than \$10,000 in his incorporated law firm. He also owns more than 10-percent of Satsuma Realty, an investment interest worth more than \$1,000.

All five city councilmembers own their homes. You have requested advice about the business interests of the following two councilmembers:

1. Ralph Portuondo is sole owner of a realty company. He sells mostly residential property.
2. Hal Thompson is an attorney and sole practitioner.

ANALYSIS

Section 87100 prohibits a public official from making, participating in making, or in any way attempting to influence a governmental decision in which an official knows or has reason to know he or she has a financial interest. An official has a financial interest in a decision that will have a foreseeable and material financial effect, different from the effect on the general public, on the following:

- 1) any investment interest worth \$1,000 or more in a business entity,

- 2) any interest in real property worth \$1,000 or more,
- 3) a source of income of \$250 or more promised to or received by the official within 12 months before a decision,
- 4) a business entity in which the official is a director, officer, partner, trustee, employee or holds any position of management, or
- 5) any donor of, intermediary, or agent for a donor of a gift worth \$250 or more promised to or received by the official within 12 months before a decision.

Section 87103.

Planning commissioners and city councilmembers are public officials. (Section 82048.) To determine whether disqualification is required, a planning commissioner or councilmember should determine whether the financial effect of a decision on his or her interests in real property, investment interests or sources of income would be foreseeable and material. The following is a summary of definitions in the Act of these types of economic interests.

Interests in Real Property

Public officials have direct real property interests in land that they own. (Section 82033.) Indirect real property interests include real property interests owned by the official's immediate family^{3/} and a pro-rata share of interests in real property of any business entity in which the official or his or her immediate family owns a 10-percent or greater investment interest with a fair market value of \$1,000 or more. (Sections 82033 and 87103(b).)

For example, if a planning commissioner owns a 15-percent share of her law firm and the firm owns its office building, the planning commissioner has a real property interest of 15 percent of the law firm's property.^{4/}

Regulation 18729 (copy enclosed) states that the value of a leasehold interest is the amount of rent owed during a

^{3/} For purposes of the Act, an official's immediate family is his or her spouse and dependent children. (Section 82029.)

^{4/} For purposes of the Act, leasehold interests, other than month-to-month tenancies, are interests in real property. (Section 82033; Regulation 18233, copy enclosed.)

12-month period or the fair market value of the leasehold during that time if the rent owed is less than \$1,000. The value of the official's pro-rata share of a leasehold interest must be \$1,000 or more for the leasehold interest to create a conflict of interest problem under the Act.

Investment Interests

Investment interests include any financial interest worth \$1,000 or more in a business entity that, among other things, owns real property in an official's jurisdiction. (Section 82034.) Such financial interests include partnership or ownership interests owned directly, indirectly, or beneficially by the official or his or her immediate family. (Section 82034.)

Furthermore, if an official has a 10-percent or greater financial interest in a business entity, the official also owns a pro-rata share of that entity's investments. For example, if a planning commissioner owned 20 percent of a realty company, and the realty company owned 50 percent of a property management company, the planning commissioner would have a 10-percent investment interest in the management company. To make this calculation, we multiplied the realty company's 50-percent share by the planning commissioner's 20-percent investment interest to get 10 percent.

Sources of Income

Under the Act, public officials' law firms are sources of income. (Section 82030(a).) Income also includes a pro-rata share of a law firm's gross revenues based on an official's or his or her spouse's proportionate investment interest of 10 percent or more in the firm. (Section 82030(a).) Therefore, a law firm client whom an official knows or has reason to know has paid the firm enough to provide the official with \$250 in income based on the official's proportionate share of gross receipts, also is a source of income to the official.

For example, if an official owns 15 percent of a law firm, a client who pays the firm \$1,666 or more is a source of income to the official. We divided \$250 by the percentage of ownership interest to determine how much must be paid to the law firm to give the official with a 15-percent share, \$250 in gross income.

When a public official is a realtor, a real estate company client who pays a commission also is a source of income to the official if the official is entitled to receive \$250 or more in

commission income from the client. (Section 82030(a).) For example, Regulation 18704.3(b)(2) (copy enclosed) requires a real estate broker to attribute the full gross value of commission income for a specific transaction to each of four sources of income: 1) the person the broker represents, 2) the person represented by an agent working under the auspices of the broker, 3) the brokerage business entity through which the broker conducts business, and 4) a person to whom the broker pays a finder's or referral fee. (Regulation 18704.3(d).) Thus, if the broker represents the seller in a transaction which produces a \$300 commission for the broker, the seller would be a source of income to the broker.^{5/}

Again, a public official should determine the effect of a change in land use designations on real property owned by each source of income of \$250 or more. The official would be disqualified from participating in a decision that would have a foreseeable and material financial effect on that source of income, different from the effect in the general public.

Disqualification

To require disqualification, the effect of a decision must be foreseeable and material and different from the effect on the general public. Regulation 18702.1(a)(3) (copy enclosed) reflects the Commission's conclusion that the effect of a zoning or similar decision concerning an official's real property interest will be considered foreseeable and material. Therefore, normally pursuant to Regulation 18702.1(a)(3), a planning commissioner or councilmember would be disqualified from participating in a land use decision concerning his or her own property interest. (Casey Advice Letter, No. A-87-048, copy enclosed.)

^{5/} Fees that a broker contractually is obligated to pay other persons, such as other brokers or agents, are not considered income to the broker. (In re Carey (1977) 3 FPFC Ops. 99, 101, copy enclosed.)

However, based on the special facts you have provided, decisions about general plan land use designations in Salinas do not establish actual or permitted uses of property. Only zoning decisions determine actual or permitted property uses. Therefore, Regulation 18702.1(a)(3) would not apply to planning commissioners and councilmembers in Salinas and the present decision to change land use designations. Regulation 18702.1(a)(3) would not disqualify these officials automatically.

On the other hand, you believe present and future property owners may use land use designations to forecast how the character of a neighborhood may change in 20 years. For example, a developer may decide to acquire presently undeveloped agricultural land because of a land use designation change from agricultural to low-density residential use. In this way, changes in land use designations may have potential effects on property values in Salinas.

Because such land use decisions have the potential of affecting property values, planning commissioners and councilmembers still must determine whether a change in land use designation for personal real property interests or real property owned by investment interests or sources of income will have foreseeable and material effects on those economic interests.

Of course, if a land use designation remains the same, the Commission considers the decision not to have a foreseeable material financial effect on the value of real property. (Hopkins Advice Letter, No. A-88-151.) A planning commissioner or city councilmember may participate in a land use decision that does not change the designation of his or her property or that owned by investment interests or sources of income.

Foreseeability

To require disqualification, the effect of a decision must be foreseeable. An effect does not have to be certain to be foreseeable. However, if an effect were a mere possibility, it would not be foreseeable. (In re Thorner (1975) 1 FPPC Ops. 198, 206-207, copy enclosed.)

Materiality

Regulation 18702(b)(2) (copy enclosed) provides guidelines for determining whether a decision to change land use designations will have a material financial effect on the value of real property owned by a public official. An effect on the fair market value of the property of less than \$1,000 is never material. If the fair market value of the property is less than \$200,000, an increase or decrease in value of \$1,000 or more is material. If the fair market value is \$200,000 or more, but less than \$2,000,000, an increase or decrease in value of one-half of one percent of the fair market value or more is material. If the fair market value is \$2,000,000 or more, an increase or decrease in value of \$10,000 or more is material. An official would be disqualified from a decision that would have a foreseeable and material effect on the value of his or her real property interests.

The effect of a decision on real property owned by a source of income that is not a business entity (i.e., an individual) must be significant to be material. (Regulation 18702(b)(3)(D).) By analogy, a decision that would increase or decrease the value of real property by the amounts discussed in the preceding paragraph would be considered material. (Regulation 18702(b)(2); Sprague Advice Letter, No. A-86-260, copy enclosed.) Consequently, an official also would be disqualified from participating in a decision if it is foreseeable that the decision would materially affect the real property owned by the individual source of income.

If a decision affects real property owned by a business entity in which an official has an investment interest worth \$1,000 or more or which has provided or promised to the official income of \$250 or more, the official should use the guidelines in Regulation 18702.2 (copy enclosed) to determine whether an effect is material. For example, if a decision will result in an increase or decrease in the value of assets or liabilities in the amount of \$10,000 or more for a small business entity not qualified for public sale, the effect of the decision would be considered material. (Regulation 18702.2(g).) An official would be disqualified from participating in a decision that would have such an effect on a business entity in which he or she has an investment interest or which is a source of income to the official.

Effect Of Decision Not Distinguishable From Effect On General Public

Even if the effect of a land use designation change were foreseeable and material, a councilmember would not be disqualified if the decision affected the official's interest in substantially the same manner it affected a significant segment of the public. For the purpose of this analysis, residents and property owners of Salinas are the general public. (See In re Owen (1976) 2 FPPC Ops. 77, 81; In re Legan (1985) 9 FPPC Ops. 1, 12, copies enclosed.)

For example, in the Owen opinion, supra, the Commission concluded that owners of single-family homes are a significant segment of the public. Therefore, if a decision to change a land use designation would affect an official in substantially the same manner as it affected most residential homeowners in Salinas, the official would be able to participate in the decision. If an investment interest or source of income were affected in the same manner as a significant segment of the general public, the official also would be able to participate in the decision.

Dividing Decision Into Separate Components

Under certain circumstances, an otherwise disqualified public official may participate in the part of a decision in which the official does not have a financial interest. (See Huffaker Advice Letter, No. A-86-343, copy enclosed.) For example, an official may be disqualified from participating in a decision about changing the land use designation for his client's property from agricultural to park use. Nevertheless, if that part of the land use decision could be isolated from a section in which the official did not have a financial interest, an official could participate in the other parts of the decision.

Effects On Officials' Economic Interests

We next apply the general rules, discussed above, to each official's particular situation.

Planning Commissioners:

Ms. Caballero

If Ms. Caballero owns her home, she has a real property interest in the home. She also has a real property interest in property her law firm owns or leases, if her pro-rata share of

the real property or leasehold is valued at \$1,000 or more. (Sections 82033 and 87103(b).) She should use the guidelines in Regulation 18702(b)(2) to evaluate whether an effect on her interests in real property would be material. Ms. Caballero would be disqualified from participating in the decision to change the land use designation for her property interests, if the effect foreseeably would be material and different from the effect on the general public.

Ms. Caballero owns at least a 10-percent share of her law firm. Therefore, the law firm is an investment interest and a source of income. Furthermore, Ms. Caballero has an economic interest in any client whom she knows or has reason to know has paid her law firm a sufficient amount so that her proportionate share of the gross receipts from the client in the past 12 months is \$250 or more.

Regulation 18702.2 provides guidelines for determining whether there is a material effect on a business entity in which an official has an investment interest or which is a source of income to the official. (Ms. Caballero should use Regulation 18702(b)(2) and (b)(3)(D) to determine whether the effect of a decision on an economic interest that is not a business entity would be material and thus require disqualification.) Ms. Caballero would be disqualified from participating in a decision that would have a foreseeable and material financial effect on an investment interest or source of income, if the effect were different from the effect on the general public.

Frank Noll

If Mr. Noll owns his home, he has a real property interest in the home. He also has a real property interest in real property his law firm owns or leases, if his pro-rata share of the real property or leasehold interest is worth \$1,000 or more. (Sections 82033 and 87103(b).) He should use guidelines in Regulation 18702(b)(2) to evaluate whether an effect on his interests in real property would be material. Mr. Noll would be disqualified from participating in the decision to change the land use designation for his property interests if it is foreseeable that the effect of the decision would be material and different from the effect on the general public.

Mr. Noll owns at least a 10-percent share of his law firm. Therefore, the law firm is an investment interest and a source of income. Furthermore, Mr. Noll has an economic interest in any client whom he knows or has reason to know has paid his law

firm a sufficient amount so that his proportionate share of the gross receipts from the client in the past 12 months is \$250 or more.

Regulation 18702.2 provides guidelines for determining whether there is a material effect on a business entity in which an official has an investment interest or which is a source of income to the official. (Mr. Noll should use Regulation 18702(b)(2) and (b)(3)(D) to determine whether the effect of a decision on an economic interest that is not a business entity would be material and thus require disqualification.) Mr. Noll would be disqualified from participating in a decision that would have a foreseeable and material financial effect on an investment interest or source of income, if the effect were different from the effect on the general public.

Robert Taylor

If Mr. Taylor owns his home, he has a real property interest in the home. As the sole owner of his law firm, he also has a real property interest in property his law firm owns or leases, if the real property or leasehold interest is valued at \$1,000 or more. (Sections 82033 and 87103(b).) He should use the guidelines in Regulation 18702(b)(2) to evaluate whether an effect on his interests in real property would be material. Mr. Taylor would be disqualified from participating in a decision to change the land use designation for his property interests, if it is foreseeable that the effect of the decision would be material and different from the effect on the general public.

Mr. Taylor owns 100 percent of his law firm. The law firm is an investment interest and a source of income. Furthermore, each client that pays Mr. Taylor \$250 is a source of income to him.

Regulation 18702.2 provides guidelines for determining whether there is a material effect on a business entity in which an official has an investment interest or which is a source of income to the official. (Mr. Taylor should use Regulation 18702(b)(2) and (b)(3)(D) to determine whether the effect of a decision on any client that is not a business entity would be material and thus require disqualification.) Mr. Taylor would be disqualified from participating in a decision that would have a foreseeable and material financial effect on an investment interest or a source of income, if the effect of the decision were different from the effect on the general public.

Mr. Higashi is a source of income of \$250 or more to Mr. Taylor. Mr. Higashi will appear before the planning commission in connection with the decision to change the land use designation for his property.

Generally, Mr. Taylor is disqualified from participating in any decision where Mr. Higashi appears as a named party or applicant unless the decision would have no financial effect on Mr. Higashi. (Regulation 18702.1(a)(1) and (c)(3).) However, if the land use designation decision concerning Mr. Higashi's property is part of a general decision affecting numerous parcels, and Mr. Higashi is not a named party to the proceeding, Regulation 18702.1(a)(1) does not require Mr. Taylor to disqualify himself simply because Mr. Higashi protests the action on his property. (Regulation 18702.1(b).) Because of a potential effect on the value of Mr. Higashi's real property, Regulation 18702(b)(2) and (b)(3)(D) should be used to determine whether the decision to change the land use designation for Mr. Higashi's property will have a material effect on the property. If the effect of the decision will be material, Mr. Taylor would be disqualified from participating in the decision.

T. Bob Uemura

If Mr. Uemura owns his home, he has a real property interest in the home. He also has a real property interest in property his law firm or Satsuma Realty owns or leases, if his pro-rata share of such real property or leasehold is valued at \$1,000 or more. (Sections 82033 and 87103(b).) He should use the guidelines in Regulation 18702(b)(2) to evaluate whether an effect on his interests in real property would be material. Mr. Uemura would be disqualified from participating in the decision to change land use designations for his property interests if it is foreseeable that the effect of the decision would be material and different from the effect on the general public.

Mr. Uemura owns shares of at least 10 percent in his law firm and Satsuma Realty. The law firm and Satsuma Realty are investment interests and sources of income. Furthermore, Mr. Uemura has economic interests in any client of his law firm or of Satsuma Realty whom he knows or has reason to know has paid his law firm or Satsuma Realty a sufficient amount so that his proportionate share of the gross receipts from the client is \$250 or more in the past 12 months. Also, any Satsuma Realty client who is a source of commission income of \$250 or more to Mr. Uemura is a source of income for purposes of disqualification.

Regulation 18702.2 provides guidelines for determining whether there is a material effect on a business entity in which an official has an investment interest or which is a source of income to the official. (Mr. Uemura should use Regulation 18702(b)(2) and (b)(3)(D) to determine whether the effect of a decision on an economic interest that is not a business entity (i.e., an individual) would be material and thus require disqualification.) Mr. Uemura would be disqualified from participating in a decision that would have a foreseeable and material financial effect on an investment interest or source of income, if the effect were different from the effect on the general public.

City Councilmembers:

Ralph Portuondo

Mr. Portuondo has a real property interest in his home. As sole owner of his realty company, he also has a real property interest in property his realty company owns, which is worth at least \$1,000 or more. (Sections 82033 and 87103(b).) He should use the guidelines in Regulation 18702(b)(2) to evaluate whether an effect on his interests in real property would be material. Mr. Portuondo would be disqualified from participating in a decision to change land use designations for his property interests, if it is foreseeable that the effect of the decision would be material and different from the effect on the general public.

Mr. Portuondo owns 100 percent of his realty company. The company is an investment interest and a source of income. Furthermore, Mr. Portuondo has an economic interest in any client who pays the company \$250. In addition, Mr. Portuondo has an economic interest in any client represented by his firm if the transaction produces for him commission income of \$250 or more.

Regulation 18702.2 provides guidelines for determining whether there is a material effect on a business entity in which an official has an investment interest or which is a source of income to the official. (Mr. Portuondo should use Regulation 18702(b)(2) and (b)(3)(D) to determine whether the effect of a decision on an economic interest that is not a business entity would be material and thus require disqualification.) Mr. Portuondo would be disqualified from participating in a decision that would have a foreseeable and material financial effect on an investment interest or a source of income, if the effect were different from the effect on the general public.

Hal Thompson

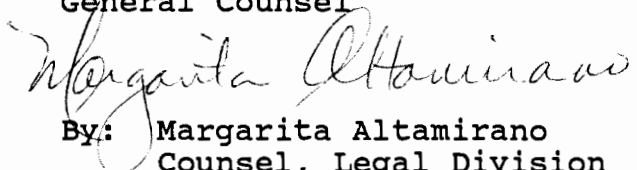
Mr. Thompson owns his home and 100 percent of his law practice. He has real property interests in his home and in property his law firm owns or leases, if the real property or leasehold interest is worth \$1,000 or more. (Sections 82033 and 87103(b).) He should use the guidelines in Regulation 18702(b)(2) to evaluate whether an effect on his interests in real property would be material. Mr. Thompson would be disqualified from participating in a decision to change the land use designation for his property interests, if it is foreseeable that the effect of the decision would be material and different from the effect on the general public.

Mr. Thompson's law firm is an investment interest and a source of income. Furthermore, each client that pays Mr. Taylor \$250 is a source of income to him. Regulation 18702.2 provides guidelines for determining whether there is a material effect on a business entity in which an official has an investment interest or a which is source of income to the official. (Mr. Thompson should use Regulation 18702(b)(2) and (b)(3)(D) to determine whether the effect of a decision on an economic interest that is not a business entity.) Mr. Thompson would be disqualified from participating in a decision that would have a foreseeable and material financial effect on an investment interest or a source of income, if the effect were different from the effect on the general public.

I hope this letter satisfactorily answers your advice request. Please call me at (916) 322-5901 if you have any questions about this letter.

Sincerely,

Diane M. Griffiths
General Counsel


By: Margarita Altamirano
Counsel, Legal Division

DMG:MA:plh
Enclosures



City of Salinas

OFFICE OF THE CITY ATTORNEY • 200 Lincoln Avenue • Salinas, California 93901 • (408) 758-7256

APR 28 10 49 AM '88

April 26, 1988

Margarita Altamirano
Fair Political Practices Commission
428 J Street, Suite 800
P.O. Box 807
Sacramento, CA 95804-0807

Re: Request for Advice
File No. I-88-140

Dear Ms. Altamirano:

This letter seeks to address the questions raised in your letter dated April 18, 1988.

1. Potential Effect - My April 5th letter states that "land use designations potentially affect property values." Property values are affected at the point that zoning is affected. General plan designations do not directly affect zoning designations. The potential is that the zoning may follow the general plan designation; however, this need not be the case.

It is possible that an investor or developer would consider a general plan designation prior to investing in a particular parcel, which designation may affect the value of property in extreme cases. For example, if a parcel is zoned Residential-medium density but has a general plan designation of general commercial, it is possible that a developer would take that general plan designation into consideration when deciding whether or not to acquire the property and for what value.

We are not aware of the reason for Mr. Taylor's client's opposition to the general plan designation of his farmland to a park (Carr Lake). We can assume that Mr. Higashi prefers to maintain the agricultural designation for his land to avoid the potential change of zoning to parks. It is my opinion that the general plan designation in and of itself will not affect the value of Mr. Higashi's property and that his property will only be affected by the change in zoning. But to the extent that the general plan is a "blueprint" for future growth and development, the general plan designations indicate a potential for a change in property values through future zoning changes.

2. Consistency - Government Code Section 65860 requires consistency of City zoning ordinances to a general plan except for charter cities, pursuant to Government Code 65803. Only charter cities with populations of two million or more must meet the consistency requirement. Salinas has a population of less than 100,000.

I have reviewed the annual FPPC Forms 730 for the attorneys on the Planning Commission and Council. The lone attorney on the Council is a sole practitioner. The Commission includes 4 attorneys. One, Robert Taylor, is a sole practitioner. The other three hold a 10% or greater interest in law firms as follows:

Frank Noll

Association interest in law office
Value of \$10,000 - \$100,000

Anna Caballero

Shareholder interest in general law practice
Value of \$10,000 - \$100,000

T. Bob Uemura

Share in professional corporation
Value of \$10,000 - \$100,000


In addition, Commissioner Noll holds 10% or more association interest in a property management company valued at \$10,000 - \$100,000. Commissioner Uemura has a 10% or more interest in Satsuma Realty with no value indicated.

I hope this information addresses your inquiries. Please let me know if I can provide further assistance.

Sincerely,

DAVID M. KENNEDY
City Attorney

By


STEPHANIE A. ATIGH

Assistant City Attorney

SAA:jb



City of Salinas

OFFICE OF THE CITY ATTORNEY • 200 Lincoln Avenue • Salinas, California 93901 • 408/758-7236

F 11
ATT 7 1988

April 5, 1988

Legal Division
Fair Political Practices Commission
428 J Street, Suite 800
Sacramento, CA 95804-0807

Re: Request For Formal Written Advice

Dear Legal Division:

The City Attorney's office is seeking formal written advice on behalf of the entire Salinas Planning Commission and Salinas City Council. The City Attorney is the authorized representative for both the Commission and Council, and we assume this is a sufficient basis to obtain formal written advice.

- The City of Salinas is in the process of establishing a new General Plan for land use designations. The General Plan itself
- has been drafted by a consultant; however, the Planning Commission will review the final draft for recommendation to the City Council. The Council will ultimately adopt a Plan.

The General Plan will assign every property within the City a land use designation; however, the General Plan will not in and of itself change zoning designations. The land use designations potentially affect property values.

Planning Commission

In mid-May, the Commission will act as an advisory body to the Council in making recommendations regarding the General Plan pursuant to Government Code section 65353 and 65354. Four of the seven Planning Commissioners are attorneys in private practice in Salinas who represent or have represented clients owning property that may be affected by the General Plan. They have received over \$250 a year in income from these clients. In addition, a majority, if not all, of the Commission members own real estate within the City which may be affected by the Plan.

The Commission through study sessions has been reviewing the working drafts of the General Plan. One of the attorney Commissioners, Robert Taylor, has represented a client who will oppose a particular general plan designation for his farmland.

City Council


All Councilmembers own residential property within the City. One Councilmember, Ralph Portuondo, owns 100% of a realty company and receives over \$250 annually from the sale, purchase and management of real estate in the City. Another Councilmember, Hal Thompson, is an attorney who receives over \$250 annually from clients owning property within the City which may be affected by General Plan designations.

Will the Commissioners and Councilmembers receiving income from clients owning property in the City be required to abstain from the action recommending or approving the General Plan? Do Councilmembers or Commissioners have a conflict of interest due to their ownership of property within city limits that would require them to abstain from acting on the General Plan?

Thank you for your assistance with this request. Please do not hesitate to contact me if further information is needed.

Sincerely,

• DAVID M. KENNEDY
• City Attorney

By 
STEPHANIE A. ATIGH
Assistant City Attorney

SAA:jb



California Fair Political Practices Commission

April 11, 1988

Stephanie A. Atigh
Assistant City Attorney
200 Lincoln Avenue
Salinas, CA 93901

Re: 88-140

Dear Ms. Atigh:

Your letter requesting advice under the Political Reform Act was received on April 7, 1988 by the Fair Political Practices Commission. If you have any questions about your advice request, you may contact Margarita Altamirano, an attorney in the Legal Division, directly at (916) 322-5901.

We try to answer all advice requests promptly. Therefore, unless your request poses particularly complex legal questions, or more information is needed, you should expect a response within 21 working days if your request seeks formal written advice. If more information is needed, the person assigned to prepare a response to your request will contact you shortly to advise you as to information needed. If your request is for informal assistance, we will answer it as quickly as we can. (See Commission Regulation 18329 (2 Cal. Code of Regs. Sec. 18329).)

You also should be aware that your letter and our response are public records which may be disclosed to the public upon receipt of a proper request for disclosure.

Very truly yours,

A handwritten signature in cursive script, reading "Diane M. Griffiths".

Diane M. Griffiths
General Counsel

DMG:plh



City of Salinas

OFFICE OF THE CITY ATTORNEY • 200 Lincoln Avenue • Salinas, California 93901 • (408) 758-7256

F P P C
APR 7 1988

April 5, 1988

Legal Division
Fair Political Practices Commission
428 J Street, Suite 800
Sacramento, CA 95804-0807

Re: Request For Formal Written Advice

Dear Legal Division:

The City Attorney's office is seeking formal written advice on behalf of the entire Salinas Planning Commission and Salinas City Council. The City Attorney is the authorized representative for both the Commission and Council, and we assume this is a sufficient basis to obtain formal written advice.

The City of Salinas is in the process of establishing a new General Plan for land use designations. The General Plan itself has been drafted by a consultant; however, the Planning Commission will review the final draft for recommendation to the City Council. The Council will ultimately adopt a Plan.

The General Plan will assign every property within the City a land use designation; however, the General Plan will not in and of itself change zoning designations. The land use designations potentially affect property values.

Planning Commission

In mid-May, the Commission will act as an advisory body to the Council in making recommendations regarding the General Plan pursuant to Government Code section 65353 and 65354. Four of the seven Planning Commissioners are attorneys in private practice in Salinas who represent or have represented clients owning property that may be affected by the General Plan. They have received over \$250 a year in income from these clients. In addition, a majority, if not all, of the Commission members own real estate within the City which may be affected by the Plan.

The Commission through study sessions has been reviewing the working drafts of the General Plan. One of the attorney Commissioners, Robert Taylor, has represented a client who will oppose a particular general plan designation for his farmland.

City Council

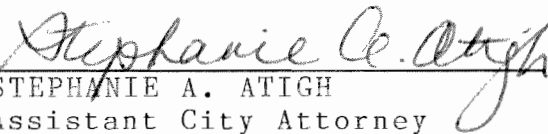
All Councilmembers own residential property within the City. One Councilmember, Ralph Portuondo, owns 100% of a realty company and receives over \$250 annually from the sale, purchase and management of real estate in the City. Another Councilmember, Hal Thompson, is an attorney who receives over \$250 annually from clients owning property within the City which may be affected by General Plan designations.

Will the Commissioners and Councilmembers receiving income from clients owning property in the City be required to abstain from the action recommending or approving the General Plan? Do Councilmembers or Commissioners have a conflict of interest due to their ownership of property within city limits that would require them to abstain from acting on the General Plan?

Thank you for your assistance with this request. Please do not hesitate to contact me if further information is needed.

Sincerely,

DAVID M. KENNEDY
City Attorney

By 
STEPHANIE A. ATIGH
Assistant City Attorney

SAA:jb



City of Salinas

OFFICE OF THE CITY ATTORNEY • 200 Lincoln Avenue • Salinas, California 93901 • (408) 758-7256

APR 20 10 49 AM '88

April 26, 1988

Margarita Altamirano
Fair Political Practices Commission
428 J Street, Suite 800
P.O. Box 807
Sacramento, CA 95804-0807

Re: Request for Advice
File No. I-88-140

Dear Ms. Altamirano:

This letter seeks to address the questions raised in your letter dated April 18, 1988.

1. Potential Effect - My April 5th letter states that "land use designations potentially affect property values." Property values are affected at the point that zoning is affected. General plan designations do not directly affect zoning designations. The potential is that the zoning may follow the general plan designation; however, this need not be the case.

It is possible that an investor or developer would consider a general plan designation prior to investing in a particular parcel, which designation may affect the value of property in extreme cases. For example, if a parcel is zoned Residential-medium density but has a general plan designation of general commercial, it is possible that a developer would take that general plan designation into consideration when deciding whether or not to acquire the property and for what value.

We are not aware of the reason for Mr. Taylor's client's opposition to the general plan designation of his farmland to a park (Carr Lake). We can assume that Mr. Higashi prefers to maintain the agricultural designation for his land to avoid the potential change of zoning to parks. It is my opinion that the general plan designation in and of itself will not affect the value of Mr. Higashi's property and that his property will only be affected by the change in zoning. But to the extent that the general plan is a "blueprint" for future growth and development, the general plan designations indicate a potential for a change in property values through future zoning changes.

2. Consistency - Government Code Section 65860 requires consistency of City zoning ordinances to a general plan except for charter cities, pursuant to Government Code 65803. Only charter cities with populations of two million or more must meet the consistency requirement. Salinas has a population of less than 100,000.

I have reviewed the annual FPPC Forms 730 for the attorneys on the Planning Commission and Council. The lone attorney on the Council is a sole practitioner. The Commission includes 4 attorneys. One, Robert Taylor, is a sole practitioner. The other three hold a 10% or greater interest in law firms as follows:

Frank Noll

Association interest in law office
Value of \$10,000 - \$100,000

Anna Caballero

Shareholder interest in general law practice
Value of \$10,000 - \$100,000

T. Bob Uemura

Share in professional corporation
Value of \$10,000 - \$100,000

In addition, Commissioner Noll holds 10% or more association interest in a property management company valued at \$10,000 - \$100,000. Commissioner Uemura has a 10% or more interest in Satsuma Realty with no value indicated.

I hope this information addresses your inquiries. Please let me know if I can provide further assistance.

Sincerely,

DAVID M. KENNEDY
City Attorney

By


STEPHANIE A. ATIGH
Assistant City Attorney

SAA:jb